IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1392 of 2005

Between:

M.A.Ghani, S/o Kareem,fair price shop dealer,
Shop No.17, H.No.1-8-15, AP.Housing Board, Gadwal, Mahabubnagar District.

..... PETITIONER

AND

1 The District Collector, Mahabubnagar District.
2 The Joint Collector, Mahabubnagar District,
Mahabubnagar.
3 The Revenue Divisional Officer, Gadwal, Mahabubnagar District.
4 The Mandal Revenue Officer, Gadwal Mandal, Mahabubnagar District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or a direction, more particularly one in the nature of writ of Mandamus, declaring the proceedings of the Revenue Divisional officer, Gadwal, in Lr.No.G/1592/04, dt. 26/08/2004 and also the orders of the Joint Collector, Mahabubnagar in case No.CS1/902/2004, dt. 15/01/2005 as being arbitrary, illegal, unconstitutional and contrary to the provisions of the control orders and consequently set aside the same.

Counsel for the Petitioner: MR.G.NAGARAJU

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the admission stage made the following :

ORDER:

The petitioner was appointed as a fair price shop dealer in the year 1992 in respect of shop No.17 of Gadwal village. A show cause notice, dated 20.07.2004 was issued by the 3rd respondent alleging that the petitioner is not residing at Gadwal Village and that the fair price shop is being run by different persons in benami. The wife of the petitioner submitted explanation on 02.08.2004 stating that the petitioner is suffering from certain ailments and has become seriously indebted. She also pleaded that in the absence of the petitioner, herself and other family members were running the shop and there was no violation on the part of the petitioner. Not being satisfied with the explanation, the 3rd respondent cancelled the authorization of the petitioner. Aggrieved thereby, he preferred an appeal before the 2nd respondent. The appeal was also dismissed on 15.01.2005. The same is challenged in this writ petition.

Heard the learned counsel for the petitioner and learned the Government Pleader for Civil Supplies.

In the show cause notice, dated 20.07.2004, the 3rd respondent framed two charges against the petitioner and they read as under:

> "1.That the F.P.Shop dealer is not residing in the village and neither submitted resignation nor informed to concerned authorities before leaving the village for long period.
>
> 2. That the F.P.Shop dealer has handed over the F.P.Shop to unauthorized (Benami) person."

An explanation was submitted by the wife of the petitioner. It was stated that the petitioner is an asthma patient and he is visiting Kurnool frequently for treatment. A further averment was made to the effect that the family is dependant upon the income from the fair price shop and it became indebted to meet the expenditure for the treatment of the petitioner. The 3rd respondent recorded a finding that the charges against the petitioner are proved and thereby cancelled the authorization. The 1st respondent took note of the explanation offered by the wife of the petitioner and ultimately confirmed the order of cancellation.

In the explanation submitted in response to the show cause notice, the circumstances under which the petitioner had to visit Kurnool for treatment have been indicated. The 1st respondent has noted the fact that the petitioner had to visit Kurnool for treatment of Asthma. Neither the 3rd respondent in the order of cancellation nor the 1st respondent in his order in the appeal disbelieved the said version. Both of them proceeded on the footing that the petitioner ought to have informed the authorities before leaving the Village. It is not as if the petitioner is a regular Government employee and that he needs the permission of the revenue authorities before leaving the Village. Further, the commodities to the fair price shop are supplied once in a month and the distribution will be completed hardly within a period of one week. The respondents cannot insist that a fair price shop dealer shall remain in the village through out, irrespective of the fact whether the essential commodities are already distributed.

The other allegation against the petitioner is that the shop is being run benami. To substantiate this allegation, the 3rd respondent ought to have indicated the name of the person, who is running the shop in benami. The wife of the petitioner categorically stated that in the absence of the petitioner, herself and other family members are running the shop. In the relevant Control Orders issued by the Government, there is an indication to the effect that the fair price shop can be run not only by the dealer himself but also his family members and in some cases, the agents and employees also. That being the case, the running of the shop by the family members of the dealer cannot be said to be benami nor does it invite the penal provisions under the relevant Control Order. There are no allegations against the petitioner that the supply of essential commodities to the cardholders attached to the fair price shop is irregular or improper in any manner.

In view of the discussion undertaken above, it cannot be said that the petitioner had violated the conditions of appointment as fair price shop dealer. Therefore, the order dated 26.08.2004 passed by the 3rd respondent as confirmed by the 2nd respondent in his order dated 15.01.2005 is set aside. The petitioner shall be entitled to function

as fair price shop dealer. It shall be open to the respondents to take steps against the petitioner if any irregularities in the matter of distribution of essential commodities are noticed in future.

In case any dealer has been appointed on permanent basis in the place of the petitioner, the 3rd respondent shall issue a show cause notice inviting explanation as to why the same shall not be cancelled in view of the orders passed in this writ petition and pass appropriate orders thereof without any further loss of time. If the arrangement was made on temporary basis, the petitioner shall be entrusted with the distribution of essential commodities from the month of March, 2005 on wards.

The writ petition is accordingly allowed. There shall be no order as to costs.

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07.02.2005

Note: Issue C.C. in three days.

L.R.Copy to be marked.

(B/o)

Jsu

To

One Fair copy to the Hon'ble Mr Justice L.Narasimha Reddy (for his lordship's kind perusal)

1 The District Collector, Mahabubnagar District.

2 The Joint Collector, Mahabubnagar District, Mahabubnagar.

3 The Revenue Divisional Officer, Gadwal, Mahabubnagar District.

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